



**Virginia  
Regulatory  
Town Hall**

## Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	Department of Social Services
<b>VAC Chapter Number:</b>	22 VAC 40-80
<b>Regulation Title:</b>	General Procedures and Information for Licensure
<b>Action Title:</b>	Comprehensive Revision
<b>Date:</b>	October 16, 2001

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

### Purpose

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

The Code of Virginia mandates the licensure by the Department of Social Services of certain facilities that provide care to children and adults. Programmatic regulations are developed for all these facilities. This regulation contains general licensing requirements that are not included in the programmatic regulations. Previously, this regulation was promulgated jointly by the State Board of Social Services and the Child Day-Care Council for all the department's licensed programs. However, the Child Day-Care Council desires to promulgate a separate regulation that applies only to child day centers and child day center systems (the two programs for which it has regulatory authority). The Council requested that all Code citations and all information that is not a specific procedure be removed from its regulation. In an effort to maintain consistency, most of these standards are also being removed from this regulation.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory*

*action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.*

Sections 63.1-25, 63.1-174, 63.1-194.2, and 63.1-202 of the Code of Virginia give the State Board of Social Services authority to promulgate regulations to protect the health, safety and welfare of children and adults in licensed facilities.

## Substance

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.*

### PART I. INTRODUCTION.

22 VAC 40-80-10. Definitions.

1. Amend the definition of “allowable variance.”

Justification: The amended definition more clearly defines the allowable variance.

2. Add a definition of “child day center system.”

Justification: The State Board of Social Services has joint promulgating authority with the Child Day-Care Council for regulations for child day center systems.

3. Delete the definition of “complaint.”

Justification: Definition is unnecessary.

4. Add a definition of “days” to mean calendar days unless otherwise specified.

Justification: Clarifies the meaning of the word.

5. Delete the definition of “denial.”

Justification: Definition is unnecessary.

6. Amend the definition of “good character and reputation” as follows: "Good character and reputation" means knowledgeable and objective people agree that the individual (i) maintains business, professional, family, and community relationships that are characterized by honesty, fairness, and truthfulness, and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care and protection of children or adults. Relatives by blood or marriage and people who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

Justification: The amended definition is simplified and is consistent with the definition that is found in programmatic regulations.

7. Add a definition of “person.”

Justification: To make clear that “person” refers to entities other than a single individual.

8. Delete the definition of “revocation.”

Justification: Definition is unnecessary.

22 VAC 40-80-20. Preplanning.

Repeal the entire standard.

Justification: The standard is informational and unnecessary.

## PART II. LICENSING STANDARDS.

22 VAC 40-80-30. Responsibility of the department.

Repeal the entire standard.

Justification: The standard is informational and unnecessary.

22 VAC 40-80-40. Adoption of standards.

Repeal the entire standard.

Justification: The standard is informational and unnecessary.

22 VAC 40-80-50. Standards development /revision process.

Repeal the entire standard.

Justification: The standard is informational and unnecessary.

### PART III. THE LICENSE.

22 VAC 40-80-70. Nontransferability of license.

Amend the standard to clarify the circumstances under which a license can be transferred.

Justification: The standard needs clarification as to when a license can be transferred and when it must be modified.

22 VAC 40-80-80. Conditional license.

Delete the first sentence of the first paragraph.

Justification: This is information and unnecessary.

22 VAC 40-80-100. Duration of licensure.

Delete the entire standard as it exists and replace with the following wording: The period of licensure shall be determined by the Commissioner in accordance with sections 63.1-177.C, 63.1-194.5, and 63.1-196.1 of the Code of Virginia.

Justification: The Code requirements regarding duration of licensure vary from section to section. This wording avoids listing the requirements for each program.

22 VAC 40-80-110. Provisional licenses.

Delete the first sentence of the first paragraph.

Justification: This is Code material and is not needed in the regulation.

22 VAC 40-80-120. Terms of the license.

1. Delete D. and E., which refer to provisional and conditional licenses.

Justification: These standards are informational and unnecessary.

2. Add a standard F. that will replace the requirements currently found in 22 VAC 40-80-190 and more clearly and simply outline the process for modification of a license.

Justification: The current requirements regarding modification of a license (22 VAC 40-80-109) need to be simplified and moved to this subsection relating to the terms of the license.

#### PART IV. THE LICENSING PROCESS.

22 VAC 40-80-130. Preapplication consultation.

Repeal the entire standard.

Justification: This standard is informational and unnecessary.

22 VAC 40-80-140. The initial application.

Delete “A.,” “C.” and “D.”

Justification: These standards are informational and unnecessary.

Add a new standard that requires pre-application training. Facilities other than assisted living facilities may decline this orientation and training.

Justification: The Code of Virginia requires that any person applying to operate an assisted living facility who has not previously owned or managed or does not currently own or manage such a facility shall be required to undergo training by the Commissioner or his designated agents. The department also plans to make such training available for other programs, though it will not be mandated.

22 VAC 40-80-150. Approval of functional design features.

Delete all of the standards except “1.” and add “2.” Number 1. is rewritten for clarity to state: Four prerequisites for licensure are (i) a valid certificate of occupancy for the intended use of the building; (ii) an inspection report from the appropriate state or local fire authority to determine compliance of the building or buildings with the Virginia Statewide Fire Prevention Code; (iii) an inspection report from the appropriate health authority; and (iv) floor plans that clearly indicate the use of space and other plans for compliance with all requirements for the building and bathroom facilities.

New standard number 2. is added: A new floor plan shall be submitted if there is a change in functional design.

Justification: The deleted standards are informational and unnecessary. Standards 1. and 2. clarify the requirements regarding functional design features of the building that must be met prior to licensure.

22 VAC 40-80-160. The investigation.

Repeal all standards except “B.” Amend “B.” to read as follows: The department’s representative will make an on-site inspection of the proposed facility and an investigation of the proposed services. Compliance with all standards will be determined by the Department of Social Services. The licensee is responsible for correcting any areas of noncompliance found during any on-site inspection.

Justification: The deleted standards are informational and unnecessary. The amended standard B. explains that an investigation will be made.

22 VAC 40-80-180. Determination of continued compliance.

Amend A. as follows: The licensee shall permit the department’s representative to make announced and unannounced inspections to the facility during the hours of its operation. The licensee shall be responsible for correcting any areas of noncompliance found during any licensing inspections.

Add a new standards that reads as follows: The licensee shall permit the department’s licensing representative, at all reasonable times, to inspect the facility and to interview employees and children or adults in the care of the facility, provided that no private interviews may be conducted with any child without prior notice to the parents of such child. The licensee shall not interfere with the department's representative in the performance of his duties during any inspection of the facility.

Justification: The new standard requires the licensee to allow department staff to inspect the facility and interview employees and children and adults in care during any licensing inspection. This includes requirements formerly found in 22 VAC 40-20-300 regarding complaint investigations.

22 VAC 40-80-190. Modification.

Delete entire standard.

Justification: The information was moved to standard 120. F. (terms of the license).

22 VAC 40-80-200. Early compliance.

Amendment made to 200.B. to require a request for early compliance to be made not more than 60 days following the issuance of the provisional or conditional license.

Justification: Sets a time frame for licensees to request modification of a license because of early compliance.

22 VAC 40-80-210. Renewal process.

A. Add a specific time period (120 days prior to expiration of license) to the statement regarding the department's sending an application for renewal of license.

Justification: Provides for a specific time period for licensees to complete the renewal application.

B. Add a specific time period (60 days) within which the licensee is required to submit a completed application.

Justification: Provides for a specific time period within which renewal application must be filed.

#### PART V. ALLOWABLE VARIANCE.

22 VAC 40-80-220. Use of allowable variances.

Delete the entire standard.

Justification: Standard is informational and unnecessary.

22 VAC 40-80-230. Conditions for initiating a request.

Delete the entire standard.

Justification: Standard is informational and unnecessary.

22 VAC 40-80-240. Process.

Minor amendments to 240.1. for clarity.

Delete B.

Delete the Exception.

Delete 240.C. 4.

Delete 240.D. 1. and 2.

Amend 240.D.3.a. to require that the licensee may request a review of a denied variance in writing within 30 days (previously the time was 15 days).

Delete 240.D.3.b.

Add a standard numbered 240. G. stating: When a variance is no longer needed the applicant shall notify the department.

Justification: The deleted standards are informational and unnecessary. The amendments simplify and clarify the requirements regarding allowable variances.

## PART VI. PROBLEM SOLVING CONFERENCES.

This part will be amended to simplify the procedures for resolution of concerns about licensing procedures, interpretations of standards, or actions of licensing personnel. The amended standards will assure that providers have the right to pursue resolution of their concerns without having to go through a complicated review process.

Justification: This section of the regulation was originally promulgated because Section 63.1-202.1 of the Code of Virginia gave the Child Day-Care Council authority to "formulate standards and regulations for licensure and operation of child day centers, child day-care camps, preschools and nursery schools in the Commonwealth in accordance with the standards referred to in Section 63.1-202. Such standards and regulations shall include provisions for appeal of licensure decisions and for the enforcement of licensure provisions." This Code section was amended in 1993 to delete the last sentence.

The Administrative Process Act (Section 9-6.14:1 et seq. of the Code of Virginia) provides for informal conferences to simplify the appeal process for licensure decisions, as well as administrative hearings.

#### PART VII. COMPLAINT INVESTIGATION.

22 VAC 40-80-290. Receipt of complaints.

Delete the entire standard.

Justification: Standard is informational and unnecessary.

22 VAC 40-80-300. Investigation of complaints.

Delete the entire standard.

Justification: Requirements moved to 22 VAC 15-20-180. regarding determination of continued compliance.

22 VAC 40-80-310. Notification of findings.

Delete the entire standard.

Justification: Standard is informational and unnecessary.

22 VAC 40-80-320. Licensee's responsibility.

Delete the entire standard.

Justification: Standard is informational and unnecessary.

VIII. SANCTIONS.

Amend this part to include provisions for "special orders" for child welfare agencies and assisted living facilities.

Justification: The 1998 session of the General Assembly amended both Chapters 9 and 10 of Title 63.1 of the Code of Virginia to include special orders as an intermediate sanction to be imposed on licensed facilities except adult day care centers. While the special orders have been implemented procedurally, information needs to be included in the General Procedures regulation.

**Alternatives**

*Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.*

This regulation contains requirements that child welfare agencies, assisted living facilities, and adult day care centers must meet that are not part of their programmatic regulations. It also includes information regarding the Department of Social Services' responsibility in the licensing process. One alternative would be to include these requirements in the programmatic regulations. However, amendments to the Code of Virginia sometimes require generic requirements to be amended and programmatic requirements are not affected. If these generic requirements were part of the programmatic regulations, each set of programmatic regulations would have to be revised rather than the one regulation.

**Family Impact Statement**

*Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen*

*or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This regulation will have little impact on the institution of the family or on family stability.